



# The Environmental Quarterly

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## LETTER FROM THE EDITOR

*Dear Environmental Colleague,*

Happy New Year or Happy NEPA Year! You probably know that the National Environmental Policy Act of 1969 turned 40 years old on the first day of 2010. The occasion was marked by a Presidential Proclamation in which President Barack Obama established January 1, 2010 as the official 40th Anniversary of the National Environmental Policy Act. In addition, the President recommitted us to “environmental quality through open, accountable, and responsible decision making that involves the American public.” A future edition of the Environmental Quarterly will celebrate the 40<sup>th</sup> Anniversary of NEPA but until then, I thought it would be fun to engage in a little NEPA trivia. So, here are three simple questions regarding NEPA for you to ponder. The first question is: Why did President Richard Nixon sign the Act on January 1, 1970 instead of earlier as he had planned, and where did he sign it? The second question is: who has been given the honor of the title, the “Father of NEPA”? And the third question is: Who was appointed the first Chairman of the Council on Environmental Quality? Answers will be provided in the next issue of the Environmental Quarterly but if you know the answers, feel free to drop me an email. Have fun, and enjoy this edition of the Newsletter.

Sincerely, **Lamar Smith**  
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## ARRA NEPA Reporting Requirements

By Bethaney Bacher-Gresock, FHWA Resource Center

President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009. Everyone at FHWA and the State DOTs should be proud of their work; as of November 2009 over 11,000 projects have been programmed and 78% of our \$26 Billion plus allocation has been obligated. ARRA has required a tremendous amount of coordination across agencies in order to efficiently move projects through the NEPA process, to permitting, to construction, to opening. At the same time, many in FHWA and State DOTs are preparing ARRA related reports, including those on NEPA actions. These reports have provided transparency and accountability.

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The Council on Environmental Quality (CEQ) in a November 20, 2009 memo commends all agencies and departments with NEPA reporting responsibilities, “Your efforts...are commendable and demonstrate the concerted commitment of countless individuals responsible for preparing the NEPA actions as well as for transmitting the quarterly reports.”

Headquarters, The Office of Project Development and Environmental Review (HEPE), prepares quarterly reports to OST on the NEPA status for all ARRA projects. OST collects the reports from all DOT modes and submits them to CEQ. At the time of this article, CEQ has submitted three reports to Congress with the next one due in early 2010.

CEQ recently tasked all Federal agencies with two new reporting requirements to be implemented immediately:

1. Identify those projects and activities where the NEPA actions are reported as “pending” for more than one reporting period; provide the reason(s) the NEPA actions remain pending; and provide a reasonable projection of progress being made to complete the NEPA actions.
2. Provide examples of the benefits provided as a result of a NEPA action. Examples of the benefits include situations where conditions were placed on the use of funds to protect sensitive resources such as protected species or historic structures, or where changes were made in constructing facilities to increase their energy efficiency.

**NEPA ARRA reports  
from other agencies can  
be found at  
[www.nepa.gov](http://www.nepa.gov).**

FHWA’s RADS system now provides users with the ability to record information on projects with pending NEPA actions that cross more than one 90-day report. RADS users should review the “NEPA Status” section of RADS to ensure that they have entered the reasons for project delay as well as the actions that are being taken to complete the project in the NEPA Comments section.

HEPE is now collecting examples of ARRA projects that have provided environmental benefits as a result of the NEPA action and asks that the Division Office forward additional examples on to our office. These examples will be included in reports to CEQ as well as highlighted in other FHWA sponsored publications (see also the ES<sup>2</sup> efforts underway at the AASHTO Center for Environmental Excellence).

For questions on the ARRA NEPA reporting requirements and to submit example ARRA projects benefiting by NEPA, please contact Neel Vanikar ([neel.vanikar@dot.gov](mailto:neel.vanikar@dot.gov)) or Bethaney Bacher-Gresock ([Bethaney.bacher-gresock@dot.gov](mailto:Bethaney.bacher-gresock@dot.gov)) in HEPE.

**Under ARRA, FHWA has  
reported on over 9,800  
CEs, over 500 EAs, and  
over 190 EISs.**

# On Stimulus and Hindrance: Economic and Other Impacts to State Department of Transportation (DOT) Cultural Resource Management Programs

by Owen Lindauer, Federal Highway Administration (FHWA), Office of Project Development and Environmental Review

While many are optimistic about the future of their cultural resource management programs, the ranks of those with a pessimistic view are growing (see survey results from the American Cultural Resource Management Association below). NEPA professionals rely upon cultural resource management programs for assessments of standing historic structures and archeological sites. As if it wasn't already increasingly difficult for State DOTs to maintain their own cultural resource management programs, the economic downturn has impacted these programs in their own version of *"The Good, the Bad, and the Ugly."*

The large projects associated with the development of the interstate highway era are now history and the projects that follow on are ones that will maintain this system now that many parts of the system are reaching the end of their intended life spans. Limited funding mechanisms constrain the variety of projects to mostly maintenance and few new projects of infrastructure on new alignments. Public resources are more constrained than ever, despite the short term stimulus. I discussed these conditions with individuals representing several cultural resource management programs who then provided their perspectives and experiences.

## **Stimulus and Optimism (*the Good*)**

The American Recovery and Reinvestment Act (ARRA) was intended to provide economic stimulus through providing a quick infusion of projects to put people to work. Many Federal agencies contemplated a rush on cultural resource management (CRM) programs to

complete expedited reviews in order to approve projects and quickly get them to bidding and letting. PennDOT's program received permission to hire 2 new employees. They also were able to purchase new cameras and field equipment. Many other State DOT CRM staff told me that their programs have not been affected, or they are not being cut. In these observations, you can see recognition of the value of maintaining cultural resource management programs and that the tools for "rapid response" were being funded, at least in some cases.

One can also view some changes with optimism. In New York, ARRA funding focused mostly on local program projects. New York DOT staff quickly found it necessary to focus on the consistency of their highway program's Section 106 compliance in order to deliver the ARRA projects. Updating their local government procedures manual and providing more oversight is leading to greater consistency, and better project delivery.

## **Freezes and Furloughs (*the Bad*)**

Many State DOT employees informed me that due to state budget pressures, their departments are currently experiencing hiring freezes, or in some cases, reductions in staff. Keeping staff at these programs is increasingly difficult due to eliminating cost of living increases, suspension of promotions, or pay cuts (3% in Idaho). Also, remaining staff (Caltrans, Idaho DOT, and Virginia DOT) have been asked to take on more responsibilities.

*See Stimulus on page 4*

### Stimulus from page 3

More fieldwork is done by staff rather than consultants. In addition, staff have been asked to assist in broader NEPA compliance review tasks.

Furloughs mean that the people needed to get work done or even to speed it along, are not at the office. Several State DOTs, including Caltrans and Georgia DOT, are experiencing furloughs of several days a month. Most states have suspended the ability for staff to travel out of state and have severely constrained within state travel as well. The outcome is the same, whether people cannot travel or must stay away from work, it is increasingly difficult to complete tasks, maintain expertise, and to share experiences with their peers that can help to streamline the environmental process.

#### **Hindrance in the Future (*the Ugly*)**

Not being able to come to work, to get training, or to collaborate with others through travel may be unfortunate choices made by management in light of current budget deficits. But some choices will serve to hinder the environmental review process in the future. (1) First, it already is increasingly difficult to attract and retain highly qualified people to transportation CRM programs. The pay scale is not competitive, benefits are shrinking. When there is a vacancy, there is an inclination either to fill the position with a less qualified individual, or to leave the position vacant.

(2) Asking remaining CRM staff to do more just to maintain the current schedule of projects at Georgia DOT means that it is increasingly difficult to plan ahead. Projects with complex cultural resource issues take time and require lead time. If that lead time is removed, it may be more likely that historic properties are identified late in the NEPA process, perhaps hindering progress by delay.

And (3) when the economic downturn results in the demise of a State DOT's CRM program (through retirement, shift to consultants, or staff reductions/ reassignments), its absence is a hindrance to streamlined project delivery. Many State DOTs employ only one or two staff for their CRM program. The loss of these individuals can easily make a project schedule ugly.

ACRA Surveys:

American Cultural Resource Association:  
Results of the September Economic Survey  
<http://acra-crm.org/displaycommon.cfm?an=1&subarticlenbr=127>

American Cultural Resource Association:  
Results of the March Economic Survey

<http://acra-crm.org/displaycommon.cfm?an=1&subarticlenbr=126>

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#### **For Your Information:**

The AASHTO Center for Environmental Excellence (CEE) and FHWA are coordinating to gather and publish information showcasing the current environmental sustainability and stewardship (ES<sup>2</sup>) practices, projects, and programs of the State DOT's, including those associated with the American Recovery and Reinvestment Act (ARRA). Emphasis will be placed on showing how State DOT's are going beyond basic compliance to towards ES<sup>2</sup> in their program delivery and "greening the DOT." The ES<sup>2</sup> information will be published in: 1) an update to the Center publication, "Above and Beyond"; 2) an ARRA project case studies brochure and a posting on the Center website; and 3) case study sections posted on the Center website. The ARRA and CEE data will also be supplemented and shared via FHWA environment related newsletters/webinars/websites over the next year.

# BLAZING A TRAIL FOR REGIONAL TRIBAL CONSULTATION EFFORTS: North Dakota Hosts Tribal Consultation Conference Focused on the Northern Plains

by Stephanie M. Stoermer, FHWA Resource Center

In the three years since the signing of the *Section 106 Programmatic Agreement for Tribal Consultation in North Dakota (PA)* on November 28, 2006, the North Dakota Tribal Consultation Committee (TCC) has worked tirelessly to achieve the goals and objectives of the PA and to promote the Tribal Consultation “Best Practices” embodied in this landmark agreement throughout the Northern Plains—and beyond.

One measure of the PA’s success is that additional tribes with ancestral ties to North Dakota have chosen to become signatories to the PA since the document was executed on November 28, 2006. The TCC currently consists of representatives from the North Dakota Department of Transportation (NDDOT), the FHWA North Dakota Division and the following Tribes: the Mandan, Hidatsa, Arikara Nation (Three Affiliated Tribes); the Turtle Mountain Band of Chippewa Indians; the Spirit Lake Dakotah Nation; the Standing Rock Sioux Tribe, Sisseton/Wahpeton Oyate; the Fort Peck Assiniboine & Sioux Tribes; the Northern Cheyenne Tribe; the Crow Tribe; the Lower Sioux Indian Community, the Wahpekute Band of Dakotah, the Santee Sioux Tribe of Nebraska, the Rosebud Sioux Tribe, and the Oglala Sioux.

Under the terms of the final PA, the TCC agrees to meet at least twice a year to review projects and discuss policy matters related to tribal consultation—primarily in the context of Section 106 compliance. The TCC meetings not only fulfill the terms of the PA--sustained discussions of tribal concerns during these meetings have served as the impetus for several collaborative efforts, including the completion of NDDOT’s Cultural Heritage Manual and the development of “In Their Own Light: A Case Study in Effective Tribal Consultation” published by the

FHWA Resource Center. Additionally, the NDDOT is currently producing a documentary chronicling the development of the PA and the work of the TCC using interviews with various TCC members.

Although many recurrent concerns discussed at TCC meetings, including cultural sensitivity and confidentiality concerns, could be at least partially addressed by providing cross-cultural training sessions and workshops, a long-term, overarching concern—developing consistent regional approaches to tribal consultation across the Northern Plains--remained problematic.

As the introduction to the “In Their Own Light” case study observes:

”... Due to Euroamerican incursions, and the subsequent settlement of the region in the nineteenth century, many of the indigenous peoples of the northern Great Plains were forced out of their ancestral territories, whereas those who remained in their homelands suffered the loss of most of their land base.

As a consequence of this tumultuous regional history, in addition to the Tribes who now reside on the reservations located within the political boundaries of North Dakota, several Tribes in South Dakota, Minnesota, and Montana also retain strong ancestral, cultural, and spiritual ties to the area. All of the Tribes—regardless of their current physical

*See Blazing a Trail on page 6*

*Blazing a Trail from page 5*

locations—possess demonstrable concerns regarding cultural resources, preservation of sacred places, the continuing destruction of places and things of cultural value, and the effects of this destruction on their respective cultural identities. “

Although TCC representatives have long expressed an interest in sharing the tribal consultation best practices inherent in North Dakota’s process with other FHWA Divisions and State Departments of Transportation (SDOTs) in the Northern Plains, providing such an opportunity was constrained by limited travel budgets and schedules. On September 11, 2008, the TCC employed a “virtual” approach to overcoming the constraints by using videoconferencing technology to connect the FHWA Divisions and State DOTs in the Northern Plains for a three-hour facilitated videoconference.

The purpose of the TCC’s Intertribal Consultation videoconference was to offer an opportunity for the FHWA Divisions and the SDOTs from North Dakota, South Dakota, Minnesota, Montana and Nebraska to meet “virtually” with the Tribal representatives from the TCC in order to initiate an interregional dialogue about how best to protect and preserve those places that the Tribes value in their ancestral homelands.

First, TCC Tribal representatives discussed their expectations for the videoconference, then Jeani Borchert, NDDOT provided an overview of the North Dakota consultation process for the benefit of the other FHWA Divisions and the SDOTs. Later in the videoconference, the Tribal participants, NDDOT, and the FHWA North Dakota Division discussed the TCC process and provided their respective assessments of how well the process was working. The TCC Intertribal Consultation videoconference concluded with a lively Q & A session.

Based on feedback received both during and after the TCC Intertribal Consultation videoconference, the TCC decided to pursue a face-to-face conference in order to further stimulate discussions about the greater issues of Tribal Consultation among state and federal agencies and the Tribes with ancestral ties to Minnesota, North Dakota, South Dakota, Nebraska, Colorado, Wyoming, and Montana.

On September 16 and 17, 2009, the TCC, in conjunction with NDDOT and the FHWA North Dakota Division, hosted the first Northern Plains Regional Tribal Conference in Mandan, North Dakota. The FHWA North Dakota Division and the FHWA Resource Center provided Technology Deployment funds in support of the conference.

Although funding and travel constraints limited the participation for many of the invited Tribes, FHWA Divisions and the SDOTs, attendance at the event was very heartening. Federal and state representatives included John Rohlf, FHWA South Dakota Division Administrator; June Hansen, South Dakota Department of Transportation; Terry Keller, South Dakota Department of Transportation; Julie Francis, Wyoming Department of Transportation; Chad Kramer North Dakota Indian Affairs and Scott Davis, North Dakota Indian Affairs. Visiting tribal representatives at the conference included Tom McCauley, White Earth White Earth Band of Ojibwe (Minnesota); Natalie Weyaus, Mille Lacs Band of Ojibwe (Minnesota); Kip Collins, Yankton Sioux Tribe (South Dakota); Rosemary Berens, Bois Forte Band of Chippewa (Minnesota); and Alvin Grassrope, Lakota Nation (South Dakota).

The conference began with a discussion of the goals and purposes, followed by presentations by Curley Youpee (Fort Peck Assiniboine & Sioux Tribes) and Stephanie Stoermer (FHWA Resource Center) on the interrelated topics of confidentiality, intellectual property rights, cultural sensitivity and trust responsibilities. Mr. Youpee also discussed the types of environmental impacts and their consideration

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*See Blazing a Trail on page 6*

in the context of tribal consultation.

Following the presentations, Ben Rhodd (Contract Archeologist, Rosebud Sioux Tribe), Jim Whitted (Sisseton/Wahpeton Oyate), Dennis Gill (Wahpekute Band of Dakotah) and Mr. Youpee led a group discussion of the nexus of confidentiality, intellectual property rights, and cultural sensitivity with effective tribal consultation practices.

During the afternoon session, Keith Moore (FHWA Office of Planning, Environment, and Realty) provided an overview of the National Environmental Policy Act (NEPA) followed by Tim Mentz's (Standing Rock Sioux Tribe) analysis of the National Historic Preservation Act's requirements for tribal consultation. Jeani Borchert (NDDOT Tribal Liaison) later delivered a presentation that described North Dakota PA and identified impediments to successful tribal consultation. Ms. Borchert's thoughtful presentation was followed by a group discussion of the constraints that impede effective tribal consultation and identification of ways to overcome those constraints such as joint consultation efforts across agencies, states, and tribes.

The morning session of the second day of the conference was devoted primarily to presentations and discussions related to the need to properly identify, evaluate, and preserve the ubiquitous stone features scattered across the landscape of the West. There is a profound need for non-Native archeologists and others to recognize and acknowledge the cultural and spiritual importance of stone features so that new standards for identification and evaluation—based on the actual uses of these features—can be developed in collaboration with Tribes.

The conference wrapped up with a group discussion and strategic planning session devoted to exploring the possible next steps in developing cohesive and consistent regional approaches to tribal consultation that will help to make the process more productive and satisfactory for all the stakeholders. With the 2009 Northern Plains Regional Tribal Conference, implementation efforts related to the *Section 106 Programmatic Agreement for Tribal Consultation in North Dakota* have yielded yet another model for other State DOTs and FHWA Divisions seeking to consult with multiple tribes in a proactive, culturally sensitive and collaborative manner

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## MOVES Transition Help

EPA has posted tools to help with the transition from EPA's MOBILE6.2 emissions factor model to MOVES, the new motor vehicle emissions model under development. MOVES is expected to be released at the end of this year and will be required for air quality conformity analysis and air quality plans sometime in the future. These new tools are spreadsheet files that convert MOBILE6.2 formatted inputs to MOVES format. The conversion processes include mapping schemes for matching MOBILE6.2 vehicles classes to MOVES source types and for matching MOBILE6.2 road types to MOVES road types. A total of 13 converters and one additional calculator have been posted. The calculator can be used to calculate VMT by type of day, month, or year using annual average weekday vehicle miles traveled (AADVMT) as an input. The converters are posted on a new web page, Tools for MOVES:

<http://www.epa.gov/otaq/models/moves/tools.htm>

# ILLINOIS TRIBAL CONSULTATION EFFORTS

by Jan Piland, FHWA Illinois Division Office

The FHWA Illinois Division office and the Illinois Department of Transportation (IDOT) hosted a collaborative workshop in November 2008 in Collinsville, Illinois to enhance communications and relationships with federally recognized Native American Tribes regarding Section 106 consultation for Illinois transportation projects. The workshop was facilitated through the U.S. Institute for Environmental Conflict Resolution (The Institute) and was planned collaboratively by a planning team that included representatives from FHWA, IDOT, the Osage Nation, the Ho-Chunk Nation of Wisconsin, and the Sac and Fox Nation of Oklahoma.

Besides developing relationships among the agencies and Tribes, a major outcome of the workshop was an effort to begin working on an agreement regarding Section 106 consultation with the Tribes. Dr. Andrea Hunter of the Osage Nation and the FHWA Illinois Division developed a draft Memorandum of Understanding (MOU) with input from the workshop planning team and the Illinois State Historic Preservation Officer (SHPO).

By the time a second workshop was planned for



Workshop participants went on a field trip to Cahokia Mounds State Historic Site.



November 5-6, 2008 Illinois Tribal Consultation Workshop was held at the Gateway Center in Collinsville, Illinois.

July 15-16, 2009 in Springfield, Illinois, there were 23 Tribes who had expressed an interest in Illinois lands and who were invited to participate in the workshop. Seven Tribes attended, as well as FHWA, IDOT, SHPO, and the Illinois State Museum. The Institute facilitators guided the group through the details of the MOU, revising it to reflect input and comments from participants. After two days of discussion, listening to others' viewpoints, and negotiating language of the agreement, a revised draft MOU was developed.

After the November 2008 workshop, we also began putting together maps that indicate which Tribes have an interest in which Illinois counties. The IDOT has created a notification system for the Tribes by working with the Illinois Transportation Archaeological Research Program (ITARP), a program at the University of Illinois, Urbana-Champaign which does archaeological work for IDOT through an intergovernmental agreement. When a proposed transportation project is sent from

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IDOT to ITARP for archaeological survey, ITARP enters the project into the electronic Project Notification System (PNS), which automatically sends an electronic notification to the Tribes who have expressed an interest in that county. Each Tribe has been provided access by password, and is only notified of projects in the county(ies) of their interest, so confidentiality is maintained. This enables Tribes to know very early in project development that there is a proposed project in that county, and the system offers them the opportunity to comment and to request consultation.

The follow-up effort for the MOU is headed by the Illinois Tribal Consultation Steering

Committee: Crystal Douglas, Kaw Nation; Dr. Andrea Hunter, Osage Nation; Tom Topash, Pokagon Band of Potawatomi Indians; Jan Piland, FHWA. The Committee will make final preparations of the draft MOU to send it out to all Tribes interested in Illinois for their review and comment. The goal is to have as many Tribes as possible sign the MOU.

The Illinois Division has learned a tremendous amount not only about how to work with and consult with the Tribes, but about the Tribes and their traditions and customs. Tribal history plays a crucial part in their relationship with the agencies. We feel we have come a long way in earning trust among the Tribes we have met, and continue to learn each day about how they fit into our process and how important we are to theirs.



Photo by Bob Carl, FHWA Resource Center

# What's Going On?



U.S. Department of Transportation  
Federal Highway Administration



Here are a few of the upcoming events of interest to the environmental & transportation community:

## March 2010

March 14  
Daylight Saving Time begins

## April 2010

April 4-10  
National Work Zone Safety Awareness Week  
<http://www.atssa.com/page.wv?section=Meetings+%26+Events&name=National+Work+Zone+Awareness+Week>

April 11-17  
National Environmental Week  
<http://www.eeweek.org/>

April 22  
Earth Day  
<http://www.earthday.net/>

## June 2010

June 5  
National Trails Day

## August 2010

Aug. 8-11  
ITE Annual Meeting and Exhibit  
Vancouver, British Columbia, Canada  
<http://www.ite.org/meetcon/index.asp>

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#### Production Schedule:

Due to our Quarterly publication schedule, all article submissions for future issues are due to the Editor-In-Chief by the 10th of March, June, September, and/or December

#### Getting the news:

\*If you would like to receive this newsletter electronically, please send your email address to: [bob.carl@dot.gov](mailto:bob.carl@dot.gov)

*For additional conferences and events, see*  
[www.fhwa.dot.gov/hep/calendar.htm](http://www.fhwa.dot.gov/hep/calendar.htm).